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GOVERNMENT OF INDIA

MINISTRY OF LAW

(Reforms)

NOTIFICATION

New Delhi, the 10th December 1947

No. G. G. O. 31.—The following Order made by the Governor-General is published for general information:—

**THE INDIA (ADAPTATION OF INCOME-TAX,
PROFITS TAX AND REVENUE RECOVERY ACTS)
ORDER, 1947.**

In exercise of the powers conferred by section 9 of the Indian Independence Act, 1947, and of all other powers enabling him in that behalf, the Governor-General is pleased to make the following Order:—

1. (1) This Order may be cited as the India (Adaptation of Income Tax, Profits Tax and Revenue Recovery Acts) Order, 1947.

(2) It shall be deemed to have effect from the fifteenth day of August, 1947.

2. In their application to the Dominion of India and any part or parts thereof, the Central Acts specified in the Schedule to this Order shall, as from the fifteenth day of August, 1947, and until repealed or altered or amended by a competent Legislature, be subject to the adaptations specified in the said Schedule.

3. The provisions of this Order shall have effect notwithstanding anything to the contrary contained in the India (Adaptation of Existing Indian Laws) Order, 1947.

THE SCHEDULE.

(See Article 2)

I. THE INDIAN INCOME-TAX ACT, 1922 (XI OF 1922)

Section 1.—In sub-section (2), *omit* “British Baluchistan and” and “the Crown Representative or”.

Section 2.—After clause (3), *insert* :—

(3A) “British India” means, as respects any period before the 15th day of August, 1947, the territories then referred to as British India but including Berar, and as respects any period after the 14th day of August, 1947, the territories for the time being comprised in the Provinces of India:—

Section 7.—In sub-section (2), *omit* “the Crown Representative or”.

Section 23.—In sub-section (5), at the end of the second proviso to clause (a), *for* “and” *substitute* :—

“Provided also that if at the time of assessment of any partner of a registered firm, the Income-tax Officer is of opinion that the partner is residing in Pakistan, the partner’s share of the income, profits and gains of the firm shall be assessed on the firm in the manner laid down in the preceding proviso and the sum so determined as payable shall be paid by the firm; and”.

To section 46, *add* :—

(8) For the purposes of this section, the expression “Collector” shall include a Collector in Pakistan and the Income-tax Officer may forward a certificate under sub-section (2) to a Collector in Pakistan through the Central Board of Revenue of Pakistan, if the assessee has property in the district of that Collector.

(9) Where a Collector in British India receives through the Central Board of Revenue of India a certificate under the signature of an Income-tax Officer in Pakistan, the Collector shall proceed to recover the amount specified therein in the manner in which he would proceed to recover the amount specified in a certificate received from an Income-tax Officer in British India, and shall remit any sum so recovered by him to the Income-tax Officer in Pakistan, after

deducting his expenses in connection with the recovery proceedings.

(10) The provisions of sub-sections (8) and (9) shall remain in force only so long as there are in force similar provisions in this Act as in force as part of the law of Pakistan or under any other similar Act forming part of the law of Pakistan, for the recovery of tax by a Collector in Pakistan on receipt of a certificate from an Income-tax Officer in British India."

Section 49A.—In sub-section (1) after "Dominion income-tax" insert "in one or more countries", and in sub-section (2) for "other than the United Kingdom" substitute "including the United Kingdom".

After section 49A, *insert* :—

"49AA. *Agreement for avoidance of double taxation in India and Pakistan.*—The Central Government may enter into an agreement with Pakistan for the avoidance of double taxation of income, profits and gains under this Act and under the corresponding law in force in Pakistan, and may, by notification in the official Gazette, make such provision as may be necessary for implementing the agreement."

Section 54. —In sub-section (3), in clause (i), after "49" *insert* "or section 49AA".

Section 66 —In sub section (8), *omit* clause (a).

Section 66A. —In sub-section (1), *omit* the proviso

II.—THE EXCESS PROFITS TAX ACT, 1940 (XV OF 1940)

Section 2.—After clause (4), *insert* :—

"(4A) "British India" means, as respects any period before the 15th day of August, 1947 the territories then referred to as British India, and as respects any period after the 14th day of August, 1947, the territories for the time being comprised in the Provinces of India;".

After section 11, *insert* :—

"11A. *Agreement for avoidance of double taxation in India and Pakistan.*—The Central Government may enter into an agreement with Pakistan for the avoidance of double taxation of profits under this Act and under the corresponding law in

force in Pakistan, and may, by notification in the official Gazette, make such provision as may be necessary for implementing the agreement."

Section 12.—In sub-section (1), after "section 11" insert "or section 11A"

After section 21, insert :—

"21A. *Application of Income-tax Act before 15th day of August, 1947, with certain modification.*—

Any references in this Act to the Indian Income-tax Act, 1922, shall, in relation to the profits of any chargeable accounting period and to the state of affairs and all the circumstances necessary to determine the charge to excess profits tax, mean the said Act as in force in the relevant period :

Provided that whatever be the relevant period, references to section 46 of the said Act shall be deemed to include references to sub-sections (8), (9) and (10) of that section."

III.—THE BUSINESS PROFITS TAX ACT, 1947 (XXI OF 1947)

Section 2.—After clause (2), insert :—

"(2A) 'British India' means, as respects any period before the 15th day of August, 1947, the territories then referred to as British India, and as respects any period after the 14th day of August, 1947, the territories for the time being comprised in the Provinces of India;"

After section 18, insert :—

"18A. *Agreement for avoidance of double taxation in India and Pakistan.*—The Central Government may enter into an agreement with Pakistan for the avoidance of double taxation of profits under this Act and under the corresponding law in force in Pakistan, and may, by notification in the official Gazette, make such provision as may be necessary for implementing the agreement."

Section 19.—For "section 21" substitute "sections 21 and 21A".

IV.—THE REVENUE RECOVERY ACT, 1890 (I OF 1890)

Section 1.—For sub-section (2), substitute :—

"(2) It extends to all the Provinces of India."

Section 4.—In sub-section (4).—

before “Burma” where it occurs for the first and second times, *insert* “Pakistan or”;

for “Burma” where it occurs for the third time, *substitute* “Pakistan or Burma, as the case may be.”;

for “British India” *substitute* “a Province of India”.

Section 8.—*Omit* “or the Crown Representative”.

For “British India” at both the places, *substitute* “the Provinces of India”.

Section 9.—In sub-section (1), *omit* “British” wherever it occurs.

Add the following sub-section:—

“(3) Sub-sections (1) and (2) shall apply in relation to Pakistan as they apply in relation to Burma”.

Section 10.—*After* “Collector in” *insert* “Pakistan or”.

MOUNTBATTEN OF BURMA,

Governor-General.

K. V. K. SUNDARAM,

Secretary.

MINISTRY OF FINANCE (REVENUE DIVISION)

NOTIFICATION

INCOME-TAX

New Delhi the 10th December 1947

No. 28.—In exercise of the powers conferred by section 49AA of the Indian Income Tax Act 1922 (XI of 1922) Sec. 11A of the Excess Profits Tax Act 1940 (V of 1940) and Sec. 18A of the Business Profits Tax Act, 1947 (XXI of 1947) as adapted by the India (Adaptation of Income Tax Profits Tax and Revenue Recovery Acts) Order 1947, the Central Government is pleased to direct that all provisions of the annexed Agreement for the avoidance of double taxation of income profits and gains under the said Acts which has been concluded between India and Pakistan shall be given effect to in the Dominion of India.

Agreement for the avoidance of Double Taxation of income between the Government of the Dominion of India and the Government of the Dominion of Pakistan.

Whereas the Government of the Dominion of India and the Government of the Dominion of Pakistan desire to conclude an Agreement for the avoidance of double taxation of income chargeable in the two Dominions in accordance with their respective laws;

Now, therefore the said two Governments do hereby agree as follows—

Article I.—The taxes which are the subject of the present Agreement are the taxes imposed in the Dominions of India and Pakistan by the Indian Income Tax Act 1922 (XI of 1922) the Excess Profits Tax Act 1940 (V of 1940) and the Business Profits Tax Act 1947 (XXI of 1947) as adapted in the respective Dominions.

Article II.—Subject to the provision of Article IX, this Agreement shall continue in force so long as the basis of residence and the scope of the chargeable provisions in the aforesaid Acts as adapted remain unaltered in both the Dominions and shall apply to the following assessments made under the said Act in the two Dominions—

(i) Assessments made on or after the 15th day of August 1947 for the assessment year 1947-48 (or for the corresponding chargeable accounting period)

(ii) All other assessments made on or after the 1st day of April 1948 excepting excess profits tax assessments for chargeable accounting periods for which provisional assessments have been made before 1st April 1948

Article III.—Save under the provisions of Section 34 of Income Tax Act 1922, and Section 15 of the Excess Profits Act, 1940 as adapted neither Dominion shall charge to tax any income of a person whose assessment (whether regular or provisional) including such income had been completed before the 15th day of August 1947 or 1st day of April 1948 as the case may be by an Income-tax Officer or an Excess Profits Tax Officer functioning respectively under the Indian Income Tax Act 1922 or the Excess Profits Act 1940 or under those Acts as adapted and applied to any Areas or to either Dominion.

Article IV.—Each Dominion shall make assessment in the ordinary way under its own laws, and where either Dominion under the operation of its laws charges any income from the sources or categories of transactions specified in column 1 of the schedule to this Agreement (hereinafter referred to as the Schedule) in excess of the amount calculated according to the percentage specified in columns 2 and 3 thereof, that Dominion shall allow an abatement

equal to the lower amount of tax payable on such excess in their Dominion as provided for in Article VI.

Article V.—Where any income accruing or arising without the territories of the Dominions is chargeable to tax in both the Dominions, each Dominion shall allow an abatement equal to one-half of the lower amount of tax payable in either Dominion on such doubly taxed income.

Article VI.—(a) For the purposes of the abatement to be allowed under Articles IV or V, the tax payable in each Dominion on the excess or the doubly taxed income, as the case may be, shall be such proportion of the tax payable in each Dominion as the excess or the doubly taxed income bears to the total income of the assessee in each Dominion.

(b) Where at the time of assessment in one Dominion, the tax payable on the total income in the other Dominion is not known, the first Dominion shall make a demand without allowing the abatement, but shall hold in abeyance for a period of one year (or such longer period as may be allowed by the Income-tax Officer in his discretion) the collection of a portion of the demand equal to the estimated abatement. If the assessee produces a certificate of assessment in the other Dominion within the period of one year or any longer period allowed by the Income-tax Officer, the uncollected portion of the demand will be adjusted against the abatement allowable under this Agreement; if no such certificate is produced, the abatement shall cease to be operative and the outstanding demand shall be collected forthwith.

Article VII.—(a) Nothing in this Agreement shall be construed as modifying or interpreting in any manner the provisions of relevant Taxation laws in force in either Dominion.

(b) If any question arises as to whether any income falls within any one of the items specified in the schedule and if so under which item the question shall be decided without any reference to the treatment of such income in the assessment made by the other Dominion.

Article VIII.—The Schedule to this Agreement may be modified from time to time by agreement between the Central Boards of Revenue of the two Dominions and references to the Schedule in the foregoing Articles shall be read as references to the Schedule, as modified.

Article IX.—Either of the Contracting Parties may, six months before the beginning of any financial year (beginning on the 1st day of April) give to the other Contracting Party, through diplomatic channels, notice of termination, and in such event this Agreement shall cease to have effect in relation to any assessment to income-tax for the financial year beginning with the 1st day of April next following and in relation to assessments to any other tax on the income of the corresponding chargeable accounting period.

THE SCHEDULE

(See Article IV.)

Source of income or nature of transaction from which income is derived	Percentage of income which each Do- minion is entitled to charge, under the Agreement			Remarks
	1	2	3	
1. (a) salaries paid by employers other than Government.	100 per cent. by the Do- minion in which the salary is earned by service.		Nil by the other.	

1	2	3	4
(b) Salaries paid by Government.	100 per cent. by the Dominion which pays the salary.	Nil by the other.	
2. (a) Interest on Government Securities.	100 per cent. by the Dominion where the securities are enfrased for payment of interest and principal.	Nil by the other.	
(b) Interest on securities other than Government securities.	100 per cent. by the Dominion in which the investment is used.	Nil by the other.	
3. Income from property.	100 per cent. by the Dominion in which the property is situated.	Nil by the other.	
4. Income from profession or vocation.	100 per cent. by the Dominion in which professional service is rendered.	Nil by the other.	
5. Income from "Business" or "Other Sources".			
(a) Rent or royalty from lease renting or hire of property.			
(b) Rent or royalty or license fees or any like consideration from rights conceded in respect of property.	100 per cent. by the Dominion in which the property is situated.	Nil by the other.	
(c) Rent or royalty or any like consideration from any interest in property.			
(d) Profits or gains from dealings in property growing out of the ownership or use of or interest in such property.	100 per cent. by the Dominion in which the property is situated.	Nil by the other.	
(e) Rent or royalty for the use of or for the privilege of using patents, copyrights, goodwill, trade marks and other like property.	100 per cent. by the Dominion in which the asset is used.	Nil by the other.	
(f) Income derived from any money lent at interest and brought into a Dominion in cash or in kind.	100 per cent. by the Dominion into which the money is brought.	Nil by the other.	

1

2

3

4

(g) Transport Ships Air 100 per cent. by the Dominion by the other, in which the traffic originates

6. Capital gains :

(a) From sale, exchange or transfer of an immovable capital asset and any rights pertaining thereto	100 per cent. by the Dominion in which the capital asset is situated	Nil by the other.	
(b) from the sale, exchange or transfer of other assets.	100 per cent. by the Dominion in which the sale, exchange or transfer take place	Nil by the other.	
7. (a) Goods purchased in one Dominion and sold in the other in the same condition without any manufacturing process so as to change the identity of the goods.	100 percent. of the profits by the Dominion in which goods are purchased provided there is a branch or regular purchasing agency in the Dominion.	90 per cent by the other. If there is no regular purchasing agency, 100 per cent. shall be chargeable by the Dominion in which goods are sold and Nil by the other.	
(b) Goods merchandise or commodities manufactured in one Dominion and delivered by the manufacturer to a buyer in the same Dominion	100% by the Dominion in which the goods are manufactured	Nil by the other.	
(c) Goods merchandise or commodities manufactured in one Dominion and sold by the manufacturer in the other without any further process and without having a selling establishment or regular agency in the latter Dominion.	75% by the Dominion in which goods are manufactured	25% by the Dominion in which goods are sold	
(d) Goods merchandise or commodities manufactured in one Dominion and sold by the manufacturer in the other through a selling establishment or a regular agency	50% by the Dominion in which goods are manufactured.	50% by the Dominion in which goods are sold.	
(e) Goods merchandise or commodities manufactured partly in one Dominion and partly in the other.	50% of the profits by each Dominion.	50% of the profits by each Dominion.	
(f) Metal ores, minerals, mineral oils and forest produce extracted in one Dominion and delivered by the extractor to a buyer in the same Dominion.	100% by the Dominion in which the minerals are extracted.	Nil by the other.	

1

2

4

3

(g) Metal ores, minerals, mineral oils and forest product extracted in one Dominion and sold in the other without any further manufacturing process and without selling establishment or a regular agency.	75% of the profits by the Dominion in which minerals are extracted.	25% by the Dominion in which goods are sold.
7. (h) As above but sold in the other Dominion through a branch or selling establishment or regular agency.	50% of the profits by the Dominion in which minerals are extracted.	50% of the profits by the Dominion in which goods are sold.
8. Dividends	By each Dominion in proportion to the profits of the company chargeable by each Dominion under this Agreement.	(As in preceding column). Relief in respect of any excess incometax deemed to be paid by the shareholder shall be allowed by each Dominion in proportion to the profit of the company chargeable by each under this agreement.
9. Any income derived from a source or category of transactions not mentioned in any of the foregoing items of this Schedule.	100% by the Dominion in which the income actually accrues or arises.	Nil by the other.

K. R. K. Menon, Addl. Secy.